

**February 1, 1999**

**DURHAM, NORTH CAROLINA  
MONDAY, FEBRUARY 1, 1999  
7:30 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chamber at City Hall with the following members present: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Absent: None.

Also present: City Manager P. Lamont Ewell, City Attorney Henry Blinder, Deputy City Clerk D. Ann Gray and Administrative Assistant Linda Bratcher.

Mayor Tennyson called the meeting to order and at this time, the Mayor made comments on the upcoming City Council Retreat scheduled on Saturday, February 6, 1999, Committee Room, 8:30 a.m.

City Manager Ewell provided a meeting schedule regarding the City Council Priorities for 1999 [policy issues] that were discussed at the January 23, 1999 City Council Retreat.

On behalf of the entire Council, Mayor Tennyson thanked Police Chief Chambers on the recent Joint Task Force announcement.

Council Member Miller announced that he will be getting married on July 3, 1999. Congratulations were extended to Council Member Miller and his fiancée.

Council Member Jacobs acknowledged that February was Black History Month.

Mayor Tennyson asked for priority items from the City Manager, City Attorney and City Clerk. **[No priority items]**

The Mayor asked if any council member(s) or citizen(s) wanted to pull any item(s) from the Consent Agenda for discussion later in the meeting. Relative to Consent Item 12 [Heritage Square], City Manager Ewell stated that the monthly payment on Heritage Square Associates first mortgage obligation was approximately \$19,100. Also, he noted the additional services the city would add to the service agreement with HDC. Mr. Ewell noted that HDC has retired a judgement of \$10,000; however, funds were used from their operating account and the administration is recommending that the \$40,000 be used as originally proposed.

Council Member McKissick requested information on HDC's cash flow on a monthly basis. It was suggested that Consent Item 12 [Heritage Square Shopping Center/Quicksilver Matters] be pulled from the Consent Agenda for further discussion later in the meeting.

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**MOTION** by Council Member Larson seconded by Council Member Miller to approve the Consent Agenda as amended was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: REPORT FROM CABLE FRANCHISE CONSULTANT - ARNOLD & PORTER**

**MOTION** by Council Member Larson seconded by Council Member Miller to receive a report from William Cook, Cable Franchise Renewal Consultant with Arnold & Porter was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: POLICE DEPARTMENT ASSESSMENT CENTER CONTRACT - THE PITTMAN MCLENAGAN GROUP, L.C.**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to enter into a contract with The Pittman McLenagan Group, L.C. in the amount of \$162,367.00 for the Police Department Assessment Center/Promotional Process Selection was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: REQUEST FOR REESTABLISHMENT OF RANK OF LIEUTENANT (POLICE DEPARTMENT)**

**MOTION** by Council Member Larson seconded by Council Member Miller to restore the rank of Lieutenant and permit the Police Department to promote to that rank as appropriate positions are identified was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: REPORT FROM POLICE DEPARTMENT CONCERNING THE USE OF LONG BARREL WEAPONS - BRADY ACT OVERVIEW**

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**MOTION** by Council Member Larson seconded by Council Member Miller to receive the report from Police Department concerning the use of long barrel weapons was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: INFORMATION TECHNOLOGY FUNCTION REORGANIZATION-  
STRATEGIC PLAN**

**MOTION** by Council Member Larson seconded by Council Member Miller to receive a report from the Administration relating to a proposed Information Technology Function Reorganization and proposed Strategic Plan was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: AMENDMENTS TO THE COMPENSATION AND CLASSIFICATION PLAN**

**MOTION** by Council Member Larson seconded by Council Member Miller to amend the City of Durham Compensation and Classification Plan adopted July 6, 1996, as amended, was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: SEWER BACK-UP CLAIM - 1200 BROAD STREET**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to pay a sewer back-up claim not to exceed \$20,000.00 for damages incurred at 1200 Broad Street on December 2, 1998 was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: PRELIMINARY APPROVAL - CITYWIDE HOMEOWNERSHIP PROJECTS  
AT OR BELOW 80% OF AREA MEDIAN INCOME - 1996 HOUSING  
BOND FUNDS - SELF HELP COMMUNITY DEVELOPMENT  
CORPORATION, JOHNETTA ALSTON AND R. D. CONSTRUCTION  
COMPANY**

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**MOTION** by Council Member Larson seconded by Council Member Miller to approve a Preliminary Allocation of 1996 Housing Bond funds in an aggregate amount not to exceed \$500,000.00 to 1) Self Help Community Development Corporation (\$240,000.00), 2) Johnetta A. Alston (\$57,042.00), and 3) R. D. Construction Company (\$202,958.00) subject to negotiation of financing terms for the projects and development of loan documents for City Council consideration at a later date was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: WALLTOWN ALLEYWAYS CLEARING - MARLEY TRUCKING AND HAULING, INC.**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to execute a contract with Marley Trucking and Hauling, Inc. in an amount not to exceed \$50,400.00 to clear and clean eighteen alleyways (listed in Attachment A) in the Walltown Community; and

To authorize the City Manager to make changes to the contract such that the contractor's obligations are not lessened and the contract price is not increased was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: NEW COUNTYWIDE DIGITAL ORTHOPHOTOGRAPHY CONTRACT - GEONEX CORPORATION**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to execute a contract with Geonex Corporation in the amount of \$456,209.70 for the development of the new countywide digital orthophotography; and

To authorize the City Manager to make changes to the contract such that the contractor's obligations are not lessened and the contract price is not increased was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: PROPOSED 1999 CERTIFICATES OF PARTICIPATION**

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**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a "Resolution Declaring the Intent of the City of Durham to Reimburse Itself for Capital Expenditures Incurred in Connection with the Construction, Equipping and Furnishing of a General Maintenance Facility and a Fire Station; the Renovation and Expansion of City Hall Office Space; and the Acquisition of a Firefighting Vehicle from the Proceeds of Certain Tax-Exempt Obligations to be Executed and Delivered During Calendar Year 1999" was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: RESOLUTION MEMORIALIZING DR. YORK DAVID GARRETT, JR.**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a "Resolution Memorializing Dr. York David Garrett, Jr" was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: RESOLUTION MEMORIALIZING GEORGE WILLIAM FRAZIER**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a "Resolution Memorializing George William Frazier" was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: MAYOR'S NOMINATION TO THE RECREATION ADVISORY COMMITTEE**

**MOTION** by Council Member Larson seconded by Council Member Miller to approve the Mayor's nomination of Robert Alan Reid to the Recreation Advisory Committee for a term to expire August 8, 2000 was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: STREET CLOSING (SC98-10) - WALKER STREET**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a resolution declaring the intent of the City Council to consider permanently closing a 10,605± square foot portion of Walker Street and setting a public hearing on Monday, February 15,

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**1999** to consider closing a 10,605± square foot portion of Walker Street was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: STREET CLOSING (SC98-12) - ADER STREET**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a resolution declaring the intent of the City Council to consider permanently closing a 6,502± square foot portion of Ader Street and setting a public hearing on Monday, February 15, 1999 to consider closing a 6,502± square foot portion of Ader Street was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: SITE PLAN APPROVAL - FAYETTEVILLE ROAD PROJECT**

**MOTION** by Council Member Larson seconded by Council Member Miller to approve a site plan for the Fayetteville Road Project, submitted by the Titan Atlantic Group, consisting of a 37,625 square foot two-story office complex on a 4.4 acre lot, zoned OI-2; F/J-B and MTC, located on the northwest corner of Fayetteville Road and Dunhill Drive (Tax Map 522, Block 02, Parcel 001B) was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: PROPOSED ACQUISITION AND EXCHANGE OF PROPERTY FOR THE DURHAM CENTRAL PARK - MEASUREMENT, INCORPORATED**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a resolution to approve the exchange with Measurement, Incorporated, of approximately 6,327 square feet of City property known as City Tract #4, Tax Map 60, in exchange for (1) approximately 748 square feet of property, Tax Map #60-01-008; (2) approximately 4,688 square feet of property, known as part of parcel 14, Tax Map #60-01-009, and (3) \$5,000.00 was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: PROPOSED ACQUISITION OF PROPERTY OF THE MCDURHAM**

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**COMPANY FOR THE AMERICAN TOBACCO TRAIL**

**MOTION** by Council Member Larson seconded by Council Member Miller to approve the acquisition of approximately 4,657.17 square feet of property, located off Fayetteville Road, a portion of Tax Map 522-02-003, as shown on the plat showing right-of-way for the American Tobacco Trail, prepared by Donald F. Greeley, R.L.S., dated November 10, 1998, property of MCDurham Company, for \$27,800.00 in settlement of pending Eminent Domain Proceedings was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: SEWER EXTENSION AGREEMENT - THE WOODS AT ALDERGATE**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to enter into a Sewer Extension Agreement with The Woods at Aldersgate, L.L.C. for the extension of City sewer to serve an approximately 13-acre property and church located on the northeast corner of Umstead and Bivins Roads was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: IBM OPERATING SYSTEM UPGRADE SOFTWARE - IBM CORPORATION**

**MOTION** by Council Member Larson seconded by Council Member Miller to find that standardization and compatibility are overriding considerations with respect to the purchase of IBM Operating System Upgrade Software; and

To accept the bid in the amount of \$57,020.40 from IBM Corporation to upgrade two (2) AS/400 units located in the Police Department for the year 2000--pursuant to G.S. 143-129(f) was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: SETTING PUBLIC HEARINGS FOR CONFIRMATION OF CERTAIN ASSESSMENT ROLLS**

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt resolutions setting public hearings on Monday, February 15, 1999 for confirmation of the following assessment rolls was approved at 7:48 p.m. by the following vote: Ayes: Mayor

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Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

- a. **Sewer Main - Hope Valley Road** from Cardinal Drive to north property line of Tax Map 422-3-2 and 423-1-24;
- b. **Water Main - Cathy Drive** from west property line of Tax Map 387-1-43 to Chandler Road; and
- c. **Water Main - Wortham Street** from Christian Avenue to Butler Avenue.

**SUBJECT: STREET ACCEPTANCE - CANADIAN COURT AND WYNDCROSS SUBDIVISIONS**

**MOTION** by Council Member Larson seconded by Council Member Miller to accept certain streets, as listed below, in the Canadian Court and Wyndcross Subdivisions for maintenance by the City of Durham was approved at 7:48 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**Canadian Court Subdivision**

1. Canadian Court - from a point 190' east of the east ditch-line of Amherst Street southeastward thru the cul-de-sac (321')

**Wyndcross Subdivision**

1. Winding Arch Drive - from the centerline of Somerknoll Drive east to the end of Phase I at STA 6 + 75 (323')
2. Winding Arch Drive - from the north curb line of Herndon Road north to the end of Phase I as STA 4 + 75 (465')
3. Somerknoll Drive - from the south curb line of Herndon Road southwest thru the cul-de-sac (698')
4. Caverstone Drive - from the centerline of Winding Arch Drive northwest thru the cul-de-sac (652')

**[GENERAL BUSINESS AGENDA]**

**[PUBLIC HEARINGS]**



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**SUBJECT: Water Main - Longleaf Drive** from North Property Line of Tax Map 825-1-47 to Donphil Road

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a resolution ordering water main improvement on Longleaf Drive from north property line of Tax Map 825-1-47 to Donphil Road **FAILED** at 7:49 p.m. by the following vote: Ayes: None. Noes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Absent: None.

**MOTION** by Council Member Larson seconded by Council Member Miller to refer the matter back to the administration was approved at 7:49 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**Note: The above motion should be defeated--petition now insufficient**

**SUBJECT: Curb, Gutter and Paving, Sewer Main, and Water and Sewer Laterals -Alfred Street** from Riddle Road to Jerome Road

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Larson seconded by Council Member Miller to adopt a resolution ordering curb, gutter and paving, sewer main, and water and sewer laterals on Alfred Street from Riddle Road to Jerome Road was approved at 7:50 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

#### **ZONING MATTERS**

**Note:**

**Case P98-46, North Pointe - At the December 7, 1998 City Council**

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Meeting this case was continued until the February 1, 1999 City Council Meeting; however, the applicant requested and has been granted an administrative deferral of the hearing until the March 1, 1999 City Council Meeting.

**SUBJECT: ZONING MATTER CASE P97-16, CHURCHILL AND BANKS (WEST POINT VILLAGE) NORTHEAST CORNER OF ROXBORO AND INFINITY ROADS**

Case: P97-16

Applicant: Churchill and Banks (West Point Village)

Location: 25.75 acres near the northeast corner of Roxboro and Infinity Roads (Tax Maps 804-3-1, 2, 3, 8, 9, 10, 11, 11A, 12, 12A, 13, 18, 19, 20A)--High Meadow Road and Oak Hill Drive are opposite the tract

Request: Rezoning from R-20 (Residential 20 District) to RM-16(D) (Multifamily Residential District, Maximum of 16 Dwelling Units per Area with a Development Plan); NC (Neighborhood Commercial District) and R-20 (Residential 20 District) to SC(D) (Shopping Center District with a Development Plan) and OI-2(D) (General Office and Institutional District with a Development Plan); E-B (Eno-B Watershed Overlay)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out R-20, NC and R-20 and placing same in and establishing same as RM-16(D), SC(D) and OI-2(D); E-B Overlay

Zoning Committee's Recommendation and Vote: Approval (6-1)

City Manager's Recommendation: Approval

Shelia Stains-Ramp, of the City/County Planning Department, made a presentation on the proposed project. She noted all the requested improvements have been agreed to and shown on the development plan. Ms. Stains-Ramp indicated that staff recommended approval of the request with the addition of three notes to the development plan as specified in the report.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

### **Proponents**

Attorney Ken Spaulding, representing the applicant, spoke in support of the request. Attorney Spaulding stated the plan would be of high quality which provides a mixture of pedestrian friendly uses. Mr. Spaulding noted the significant traffic improvements being funded by the developer and he also noted that the plan would improve the situation of previous flooding which has existed further away by the use of retention ponds. Attorney Spaulding

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stated they have met with residents of Old Farms and River Forest.

Linda Warren, a resident of Infinity Road, spoke in support of the request. She noted her previous concerns with the proposal have been addressed.

Steve Blake, a resident of Infinity Road, spoke in support of the request. He noted the developer has addressed his concerns.

### **Opponents**

Larry Holt, a resident of Old Farm Neighborhood, spoke in opposition to this request noting the current traffic in the area.

He also stated more development increases flood problems. Mr. Holt asked council to delay this matter for 30 days to allow residents to meet and determine what they would prefer to have developed at the proposed location. He requested denial of the request if council chose not to delay for 30 days.

Marjorie George, a resident of Shady Lane, raised concern with the additional traffic if the proposal is approved. She also spoke in support of a 30 day deferral.

Kathy Wright-Moore, a resident of Sourwood Drive, asked council to defer this request for 30 days to allow the following communities to meet on this issue: Eno Trace; Stephen Woods; Kenwood Acres; and Briardale.

Ollie Cook, a resident of Old Farm Neighborhood, raised concern with the current stormwater problems in the area. She stated they would like to continue their dialogue with the City Manager on addressing the stormwater issues in the area. She noted that within the next 30 days a resolution may be reached. Also, Mrs. Cook spoke on the notification process for neighborhood associations.

### **Rebuttal**

Attorney Ken Spaulding stated it was his understanding from the city staff that notification was given to the neighborhood associations. Attorney Spaulding also noted that a request was made by Mrs. Ollie Cook for a 30 day deferral which was granted on December 11, 1998.

Mayor Tennyson closed the public hearing.

Council Member Jacobs asked if proper notification was given.

Sheila Stains-Ramp, of the Planning Department, noted this case was submitted on February 17, 1997 and neighborhood notices were mailed within one month to the neighborhoods registered with the Planning Department. Also, Ms. Stains-Ramp stated there has been

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notice given to property owners within 300 feet of the site.

Council Member Jacobs asked the administration to address the flooding problems and the progress being made.

Sue Burke, of the Public Works Division, noted approval has been given by FEMA for the purchase of 19 homes throughout the city and several are located in the River Forest/Old Farm area. Ms. Burke stated the administration is now awaiting the State to provide procedures to be followed. She noted they will be meeting with the property owners explaining the process and reviewing all the procedures with them before any offers are made. Ms. Burke also noted this process will not be completed within the next 30 days.

Council Member Larson asked the applicant he if the three issues referenced in the staff report have been addressed.

Attorney Ken Spaulding replied all three items have been addressed.

Council Member Larson asked the developer if he had agreed to the possibility of installing a traffic light as mentioned by an earlier speaker.

Attorney Ken Spaulding stated a traffic light at Oak Hill was agreed to at the October meeting of the Zoning Board; however, the final analysis will be up to the city staff. Mr. Spaulding stated if a note is needed on the plan regarding this traffic light, they would be willing to do that.

Council Member Larson asked the administration for their findings on the stormwater system.

Sue Burke noted the stormwater facilities for water quality protection were being provided by the applicant.

Council Member McKissick requested information on the additional transportation improvements being made by the applicant.

Attorney Ken Spaulding noted the western part of the applicant's property on Roxboro is being reserved for future lane widening.

A motion was made by Council Member Larson to approve the request with notes on the development regarding travel lane along Roxboro Road and traffic signal at Oak Hill. This motion was seconded by Mayor Pro Tempore Clement.

A substitute motion was made by Council Member McKissick to defer action on this proposal until the March 1, 1999 City Council Meeting to allow the neighborhoods an opportunity to meet. This motion was seconded by Council Member Cox.

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**Discussion was held by Council on stormwater issues; passby trips; transportation improvements being proposed; discussions with the neighborhoods; and the notification process.**

Several Council Members spoke in support of deferring this request until the March 1, 1999 City Council Meeting.

Council Member Larson noted he did not hear a request from the immediate neighborhoods to have a meeting with the developer but to come together and talk with each other about what to do with the property.

Mrs. Ollie Cook noted they did not expect anything from the developer and she did not know what would be achieved and that was not her objective. She noted they needed the time to sit down with the City to see what kinds of protection can be given to their neighborhood as it relates to stormwater management. She stated they have been in negotiations with the City and would like to continue that for 30 days.

For clarification, Council Member Blyth asked the administration if it was stated earlier that the run-off associated with this development would not impact the current problem in the Old Farm Neighborhood because it would dump into the Eno downstream.

Sue Burke, of the Public Works Department, replied yes that is correct. She noted that the stormwater from this particular development has been addressed by the developer through both the water quality facility and by the provision of extended detention in the stormwater facility. She noted the discharge will eventually make it way to a point that is east of River Forest which is on the opposite side of Old Farm. Ms. Burke stated the dialogue with Old Farm relative to flooding problems will continue; however, the developer has addressed the stormwater issues regarding the proposed plan this evening.

**SUBSTITUTE MOTION** by Council Member McKissick seconded by Council Member Cox to defer this matter and to continue the public hearing until the March 1, 1999 City Council Meeting without further advertising **FAILED** at 9:26 p.m. by the following vote: Ayes: Council Members Cox, McKissick, Miller, Brown and Engelhard. Noes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Burnette, Griffin, Jacobs, Langley and Larson. Absent: None.

**MOTION** by Council Member Larson seconded by Mayor Pro Tempore Clement to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out R-20, NC and R-20 and placing same in and establishing same as RM-16(D), SC(D) and OI-2(D); E-B Overlay [with notes on the development plan regarding travel lane along

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Roxboro Road and traffic signal at Oak Hill] was approved at 9:32 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: Council Member Engelhard. Absent: None.

**SUBJECT: ZONING MATTER CASE P98-53, E. T. DEVELOPMENT CORPORATION, NORTH AND EAST OF THE CORNER OF UMSTEAD AND BIVINS ROAD**

Case: P98-53

Applicant: E. T. Development Corporation

Location: 69.32 acres north and east of the corner of Umstead and Bivins Road (Tax Map 834-1-1A and 1B)

Request: Rezoning from RD (Rural District) to PDR-1.99 (Planned Density Residential District with 1.99 Units per Acre)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RD and placing same in and establishing same as PDR-1.99.

Zoning Committee's Recommendation and Vote: Approval (7-0)

City Manager's Recommendation: Approval

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Rick Prentis, representing the applicant, spoke in support of the request.

No one spoke in opposition. Mayor Tennyson closed the public hearing.

**MOTION** by Council Member Larson seconded by Council Member McKissick to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RD and placing same in and establishing same as PDR-1.99 was approved at 9:34 p.m. by the following vote:

Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

**SUBJECT: MAJOR SPECIAL USE PERMIT (M99-1) - TIDEWATER FIBRE CORPORATION, 1017 HOOVER ROAD (TAX MAP 362-1-1)**

**Recommendation:** Hold the public hearing and evaluate the evidence presented. The Planning staff will make a recommendation after

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the hearing of this case. After the hearing, one of these two motions is in order:

**Motion A - (Approval With or Without Conditions):**

To direct the Planning Director to prepare a decision granting with conditions the Use Permit in Case M99-1. (Council should identify any conditions they wish to incorporate into their approval. Staff will prepare the decision for Council's action.)

**Motion B - (Disapproval):**

To direct the Planning Director to prepare a decision denying the Use Permit in Case M99-1. (Council should identify the findings they are unable to make so these can be incorporated into the decision. Staff will prepare the decision for Council's next meeting for action.)

Deputy City Clerk Gray swore in the following individuals: Dick Hails, Helen Youngblood; Terry Rolan; Earl Lewellyn; Duane Stewart; Michael Benedetto; Ethel Breeze; and Herbert Johnson.

Mayor Tennyson explained the proceedings for a major special use permit hearing.

The Mayor asked Council to reveal any possible conflicts and to withdraw from this hearing if necessary. Also, Mayor Tennyson asked if any Council Member had been exposed to any evidence or information that may not come out at the hearing tonight.

The Mayor asked the applicant and representative for the opponents to identify themselves: 1) Michael Benedetto, representing Tidewater Fibre Corp; and 2) Ethel Breeze, a resident of Carolyn Drive.

**Testimony from Staff**

Helen Youngblood, of the City/County Planning Department, stated this was a major special use permit for Tidewater Fibre Corporation to be located at 1017 Hoover Road. Ms. Youngblood briefed council on the surrounding zones; current zone; proposed use; present use; access to the proposed property; parking and loading; the existing structure; adjacent properties; lighting; utilities; existing vegetation; and open space. She noted the surrounding properties were zoned I-3 and compatibility was reasonable with respect to the proposed use. She stated the Transportation Division has reviewed this proposal with respect to access; site impact; acceptable design standards and sight distance and parking and offers the following which as been indicated on the site plan: "That the property provide an additional 75 foot storage on the drive entrance along Hoover and upgrade of the railroad crossing of 24 foot wide." She noted the Development Review Board reviewed this request and approved it on January 8, 1999, subject to corrections.

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The Mayor asked if there were any questions from the Council or any other interested parties.

Council Member Larson asked the administration to point out on the map where the primary access would be.

Helen Youngblood stated to the north portion of the site is the secondary access on Ashe Street and on the southern portion of the site closest to Angier Avenue would be the main access.

Council Member Engelhard asked the administration if a contour map was available showing the entire facility.

Helen Youngblood briefed council on the topography of the site. Also, Ms. Youngblood noted the structures to be used on the site [Building 1 and Building 5]. She stated the applicant would not be allowed to use any other structures unless he appeared before the City Council.

The applicant Michael Benedetto noted a lease line and the portion of the property actually being leased by Tidewater.

Council Member Cox asked what was the distance between the closest residential home to the facility.

Helen Youngblood stated around 800 feet. She stated the applicant will be prepared to answer that question.

### **Testimony from Applicant**

Michael Benedetto, representing Tidewater Fibre, stated with reference to the number of trucks, initially they had anticipated about 26 trips to the facility; however, they do feel the number will be a little higher [35 to 40]. With reference to noise, he stated decimal levels should not exceed 88.5 decibels per the manufacturer of the trucks. He noted they are only leasing 21 acres of the property; however, he stated they do have an option to purchase the property and do intend to exercise that option. He noted they have a contractual obligation to former Sunshares employees and the site being considered is serviced by DATA. He noted the existing site being utilized at the present is very confined and they are looking to improve the proposed site generating more tax dollars and providing employment for the surrounding area.

Mayor Tennyson asked if any Council Members or other interested parties had any questions.

Discussion was held by Council on traffic counts on Hoover Road; impact of the trucks on existing city streets; hours of operation; noise; structures being requested to be used; and proposed lease



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line. [For an indepth discussion, please refer to the tape]

Michael Benedetto stated the requested hours of operation will be from 6:00 a.m. to 8:00 p.m., Monday through Saturday.

Council Member Burnette asked the applicant what activities would take place on the site.

Michael Benedetto noted all the materials collected from residential households and drop off programs will be processed and shipped from the site [glass, plastic, aluminium cans]. He noted there will be no smoke and the only residue might be some miscellaneous items that can not be recycled. Also, he noted no hazardous chemicals will be used at the facility other than materials that may be generated by the servicing of trucks.

Herbert Johnson, a resident of Owen Street, raised concern with the past problems at this site. Mr. Johnson asked if the building will be enclosed to protect the noise. He also asked for information regarding the truck routes.

Michael Benedetto stated the trucks will leave the facility between 6:30 a.m. and 6:45 a.m., with the routes beginning at 7:00 a.m. He stated the trucks would not be dumping at 7:00 a.m. nor earlier than 7:00 o'clock in the morning. Mr. Benedetto noted that Hoover Road and Angier would be the main route used to leave the facility; however, he did not want to restrict their ability to access Ashe Street because there are households in that neighborhood that will need to be serviced with curb side recycling. With reference to noise and the processing activity, he stated if a problem arose he would certainly want to hear from the residents. He noted if the permit is granted, it was their intention to make improvements to the building which would further limit the amount of noise by enclosing the building.

City Attorney Blinder asked Mr. Benedetto if the memo from him addressed to Helen Youngblood dated January 25th was accurate.

Michael Bendetto replied yes.

City Attorney Blinder asked Mr. Benedetto if the site plan dated December 21, 1998 referencing numbers 1 through 8 and a series of pictures labeled 1 through 8 - if these items were prepared on behalf of the applicant.

Michael Benedetto replied yes.

City Attorney Blinder asked the applicant if he wanted the documents to be entered into the record.

Michael Benedetto replied yes.

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City Attorney Blinder asked the opponents if they had any objections having the documents entered into the record.

The opponents had no objections entering the documents into the record.

Council Member Brown raised concern with the written document dated January 25th referencing the numbers of trucks verses the testimony given this evening.

Michael Benedetto stated the number of trucks [12 to 13 vehicles] will be leaving the facility just before 7:00 a.m every morning and the trucks will be coming back to dump the materials and going back out again and returning at the end of the day. He noted this will be considered two trips for the 12 to 13 trucks.

Council Member Blyth also expressed concern with the numbers regarding the trucks verses the testimony given.

Mayor Tennyson noted one of the conditions the Council could stipulate is the number of trips being approved.

Council Member Cox asked the applicant if he would be willing to agree to a condition that the operating facility be enclosed.

Michael Benedetto stated it was their intention to purchase this site and make improvements and get overhead doors put in place subject to getting the necessary permits to do that. He noted he would commit to that.

Herbert Johnson raised concern regarding the blowing of debris from the operation.

Michael Benedetto stated he did not anticipate that happening; however, he asked the residents to give him a call and he would take care of it.

Herbert Johnson stated if the applicant wanted to have this recycling facility in the area he should be willing to enclose the facility.

Council Member Langley asked if there was an alternate site considered.

Michael Benedetto stated the alternate site they considered was in Orange County which was not a win win situation for their employees nor the City of Durham.

### **Opponents**

Ethel Breeze, a resident of Carolyn Drive, stated this location is

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undesirable. Ms. Breeze stated East Durham gets its share of low-income housing, chemical plants, and anything else that is really not desirable. She raised concern for the safety of the children and residents and asked council not to approve the permit. Ms. Breeze asked that the residents be allowed to review all the impacts which this facility could have on the total community.

Mayor Tennyson asked if there were any questions from the Council or other interested parties.

Michael Benedetto stated their drivers were very safe and safety was very important. He noted their trucks drive through residential neighborhoods and their drivers are very conscious about their surroundings.

**EXCUSE COUNCIL MEMBER COX FROM THE MEETING**

**MOTION** by Council Member Larson seconded by Council Member Miller to excuse Council Member Cox from the meeting was approved at 10:58 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Cox, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Absent: None.

Council Member Blyth asked if the special use permit can be approved for six months subject to review.

Helen Youngblood, of the City/County Planning Department, stated the permit was actually issued to the land; however, conditions could be placed on the permit. She noted if council wanted the applicant to provide a traffic report within six months, that would be a requirement the applicant would need to fulfill. She stated she did not know of any other situation where the permit would be valid for a six month period because the permit travels with the land and specific conditions attached.

Council Member Blyth asked what would be the legal options or remedies if the council discovered in six months that this situation has become a safety problem or a quality of life issue to the surrounding community.

Helen Youngblood stated any violations that would occur on site and not in compliance with the permit would be dealt with by the zoning code enforcement staff and if it was found by the Planning Staff that the applicant was not adhering to the permit, it could be revoked.

Council Member Blyth asked if the council could articulate conditions in the permit that relate to safety and noise abatement.

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Helen Youngblood stated those conditions can be placed on the permit. She noted council could place specific decimal level readings on the permit that could not be exceeded and if the applicant exceeded the levels then the applicant would have problems.

Council Member Blyth asked the administration for suggestions on how the council could deal with limiting off site trash.

Helen Youngblood suggested by having fencing in place.

Council Member Blyth asked the administration if the following motion would be appropriate and legal: "Approve the permit with the following conditions 1) the applicant fence in the site with a particular type of fencing; 2) building be enclosed within three months; and 3) the actual tipping not occur before 8:00 a.m. or after 8:00 p.m."

Helen Youngblood replied yes the motion would be appropriate and the conditions would need to be articulated as a part of the order and the applicant would need to agree with the conditions.

The Mayor suggested that the Council hear the remaining testimony then entertain a motion to continue the hearing until the February 15th City Council Meeting with the recommendation that staff draft an order with conditions that reflect the concerns expressed by the Council.

Council Member McKissick asked for information on prior traffic generated at the site.

Ethel Breeze stated the prior traffic generated by the previous tenant was much lower than what is being proposed this evening.

Herbert Johnson stated he could not provide an exact count on the prior traffic; however, by residing in the area he noted the previous traffic was much lower than what the current applicant is proposing. Mr. Johnson stated with the previous owner he would only see about six trucks per day. Also, Mr. Johnson stated the previous company did not operate at night nor early mornings.

Council Member Burnette stated she shared the concerns raised by the community and was concerned that East Durham continues to be the dumping ground of the City. She noted the residents in this area needed some relief. Also, Council Member Burnette stated even if the cost was higher she would like to see the facility locate in an isolated area even in Orange County. Council Member Burnette asked what would be the result if the site in question is not approved.

Helen Youngblood stated the applicant would need to seek a site elsewhere. Ms. Youngblood noted the number of uses allowed in

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this particular zone as uses permitted by right.

At this time, Ms. Youngblood briefed council on the persons that were contacted regarding this request.

Council Member Burnette stated the community has raised some serious concerns and the council needed to become more sensitized to the needs of communities and what they really want.

Council Member Engelhard asked for clarification on the permitted uses by right.

Helen Youngblood noted if this proposal being requested this evening failed and a coal and wood lot wanted to locate in this same area, it would be a use permitted by right on the property and it would not come before the council for approval for a permit.

Michael Benedetto informed the council their current facility located on Mallard Street is in close proximity to numerous residents and the lease expired on yesterday. He noted they currently have a lease in place at the proposed site being requested this evening.

Earl Lewellyn, of the Transportation Division, informed the council that the impact of the trucks to be used by the applicant would have a much lower impact on the streets than the trucks used by the previous company.

A motion was made by Council Member Langley to continue the public hearing without further advertising until the February 15, 1999 City Council Meeting and to request the staff to draft an order addressing the concerns raised by council and residents. This motion was seconded by Council Member Miller.

Council Member McKissick requested that the administration address the following conditions as a part of the order:

1. Hours of operation Monday through Friday 6:30 a.m. to 7:30 p.m. with no sorting or tipping occurring except between the hours of 8:00 a.m. and 6:30 p.m. and on Saturday with restricted hours from 8:00 a.m. to 4:00 p.m.
2. Building be enclosed where the bailer equipment will be located to prevent any noise from escaping the protected premises.
3. Establish a parameter that would be \_\_\_\_\_ from the boundary line of the property which would be able to determine if there was audible noise.
4. Fencing with Landscaping/Screening to make certain glass or trash associated with the operation is contained within the site.
5. Restriction to the Number of Trips Per Day being generated.

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Council Member Blyth asked the administration to work with the neighborhood to establish the most reasonable but least restrictive hours of operation. With regard to fencing, Council Member Blyth asked the administration to explore the possibility of fencing only a portion of the area as much as necessary to insure safety - not necessarily the entire property. Also, Ms. Blyth asked the administration to include the appropriate wording stating that all future city ordinances including any revisions [such as the noise ordinance] will be applicable unless this site is specifically exempt by council.

Council Member Engelhard asked the administration to include in the order a condition that states the facility will not be recycling hazardous materials. Also, Ms. Engelhard requested the administration provide information on decimal level measurements on the front property line of the Hoover Road apartments [with a loaded truck the applicant intends to use with designated speed].

Council Member Brown requested that the safety of the children and residents be addressed within the next two weeks.

**MOTION** by Council Member Langley seconded by Council Member Miller to continue the public hearing without further advertising until the February 15, 1999 City Council Meeting and to request the staff to draft an order with conditions addressing the concerns raised by council was approved at 11:40 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Excused Absence: Council Member Cox. Absent: None.

**[ITEM PULLED FROM THE CONSENT AGENDA]**

**SUBJECT: PROPOSED RESOLUTION OF HERITAGE SQUARE SHOPPING CENTER - QUICKSIVER MATTERS (HERITAGE SQUARE ASSOCIATES)**

**MOTION** by Council Member Larson seconded by Council Member Miller to authorize the City Manager to enter into an agreement with Heritage Square Associates to restructure the existing loans into a new second mortgage in the amount of \$962,000.00 and to make minor changes to the loan documents; and

To adopt "An Ordinance Amending the 1998-99 City of Durham Budget Ordinance, as Amended, the Same Being Ordinance #11475" was approved at 11:41 p.m. by the following vote: Ayes: Mayor Tennyson, Mayor Pro Tempore Clement and Council Members Blyth, Brown, Burnette, Engelhard, Griffin, Jacobs, Langley, Larson, McKissick and Miller. Noes: None. Excused Absence: Council Member Cox. Absent: None.

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There being no further business to come before the Council, the meeting was adjourned at 11:42 p.m.

D. Ann Gray  
Deputy City Clerk

Margaret M. Bowers, CMC  
City Clerk